

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HI-LEX CONTROLS INCORPORATED,  
HI-LEX AMERICA, INCORPORATED and  
HI-LEX CORPORATION HEALTH AND  
WELFARE PLAN,

Plaintiffs,

Case No: 11-12557

v.

Hon. Victoria A. Roberts

BLUE CROSS AND BLUE SHIELD OF  
MICHIGAN,

Defendant.

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**ORDER (1) ADOPTING THE REPORT AND CERTIFICATION OF SPECIAL  
MASTER; (2) GRANTING IN PART DEFENDANT'S OBJECTIONS TO  
THE MAGISTRATE JUDGE'S APRIL 12, 2013 ORDER; AND (3) SETTING  
ASIDE IN PART THE MAGISTRATE JUDGE'S ORDER**

This matter is before the Court on the parties' discovery dispute regarding Defendant's assertion of privilege to documents attached to privileged communications. On April 18, 2013, the Court ordered the appointment of a Special Master to assist with this dispute, (Doc. 228).

The Court **ADOPTS** the Report and Certification of Special Master. Pursuant to it and the Court's April 18, 2013 Order, Defendant:

- (1) Must produce 29 of the 50 documents selected by Plaintiffs;
- (2) Must produce 2 of the 50 documents selected by Defendant;
- (3) Must produce 30 of the 200 documents randomly selected; but
- (4) **Need not** produce the balance of the disputed documents.

Defendant must comply with this order immediately.

With entry of this order, the Court **GRANTS IN PART** Defendant's objections to the Magistrate Judge's April 12, 2013 Order, (Doc. 215), and **SETS ASIDE** the part of the Magistrate Judge's Order that requires Defendant to produce all of these disputed documents and waives their privilege, (Doc. 212). See Fed. R. Civ. P. 72(a). The Court finds that was clearly erroneous.

**IT IS ORDERED.**

S/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: April 19, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on April 19, 2013.

S/Carol A. Pinegar  
Deputy Clerk

ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HI-LEX CONTROLS INCORPORATED,  
HI-LEX CORPORATION and HI-LEX  
CORPORATION HEALTH AND  
WELFARE PLAN,

Case No. 2:11-cv-12557-VAR-PJK  
Honorable Victoria A. Roberts  
Magistrate Judge Paul A. Komives

Plaintiffs,

vs.

BLUE CROSS AND BLUE SHIELD  
OF MICHIGAN,

Defendant.

and

BORROUGHS CORPORATION and  
BORROUGHS CORPORATION  
EMPLOYEE BENEFIT PLAN,

Case No. 2:11-cv-12565-VAR-PJK  
Honorable Victoria A. Roberts  
Magistrate Judge Paul A. Komives

Plaintiffs,

vs.

BLUE CROSS BLUE SHIELD OF  
MICHIGAN,

Defendant.

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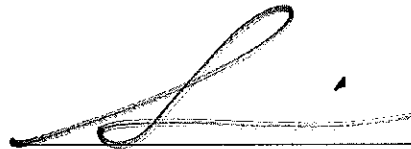
**REPORT AND CERTIFICATION  
OF SPECIAL MASTER**

GEORGE J. BEDROSIAN, having been appointed to serve as a Special Master in  
the above entitled matter submits the following report to this Honorable Court.

Pursuant to the Court's Order Appointing Special Master, the Special Master reviewed fifty (50) attachments submitted by Plaintiffs; fifty (50) attachments submitted by Defendant; and two hundred (200) attachments randomly selected by the Special Master. These documents are outlined in the lists attached to and incorporated in this Report.

The decision of the Special Master as to whether the above described attachments are "privileged" or "not privileged" is indicated with each attachment number.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Bedrosian', is written over a horizontal line.

GEORGE J. BEDROSIAN  
Special Master

DATED: April 19, 2013

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
1.)	Selected by Plaintiff	PRIV0039	x	
2.)	Selected by Plaintiff	PRIV0179	x	
3.)	Selected by Plaintiff	PRIV0187	x	
4.)	Selected by Plaintiff	PRIV0191	x	
5.)	Selected by Plaintiff	PRIV0555	x	
6.)	Selected by Plaintiff	PRIV2107		x
7.)	Selected by Plaintiff	PRIV2158		x
8.)	Selected by Plaintiff	PRIV2298	x	
9.)	Selected by Plaintiff	PRIV2310	x	
10.)	Selected by Plaintiff	PRIV2311	x	
11.)	Selected by Plaintiff	PRIV2348	x	
12.)	Selected by Plaintiff	PRIV2471		x
13.)	Selected by Plaintiff	PRIV2543		x
14.)	Selected by Plaintiff	PRIV2544	x	
15.)	Selected by Plaintiff	PRIV2556	x	
16.)	Selected by Plaintiff	PRIV2597		x
17.)	Selected by Plaintiff	PRIV2642		x
18.)	Selected by Plaintiff	PRIV4169	x	
19.)	Selected by Plaintiff	PRIV4963		x
20.)	Selected by Plaintiff	PRIV6309	x	
21.)	Selected by Plaintiff	PRIV6313	x	
22.)	Selected by Plaintiff	PRIV6318	x	
23.)	Selected by Plaintiff	PRIV6319		x
24.)	Selected by Plaintiff	PRIV6320	x	
25.)	Selected by Plaintiff	PRIV6321	x	
26.)	Selected by Plaintiff	PRIV6322		x
27.)	Selected by Plaintiff	PRIV6323		x
28.)	Selected by Plaintiff	PRIV6324		x
29.)	Selected by Plaintiff	PRIV6325		x
30.)	Selected by Plaintiff	PRIV6326	x	
31.)	Selected by Plaintiff	PRIV6327		x
32.)	Selected by Plaintiff	PRIV6328	x	
33.)	Selected by Plaintiff	PRIV6329		x
34.)	Selected by Plaintiff	PRIV6330		x
35.)	Selected by Plaintiff	PRIV6331		x
36.)	Selected by Plaintiff	PRIV6332		x
37.)	Selected by Plaintiff	PRIV6333		x
38.)	Selected by Plaintiff	PRIV6334		x
39.)	Selected by Plaintiff	PRIV6335		x
40.)	Selected by Plaintiff	PRIV6336		x
41.)	Selected by Plaintiff	PRIV6337		x
42.)	Selected by Plaintiff	PRIV6339	x	
43.)	Selected by Plaintiff	PRIV6340		x

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
44.)	Selected by Plaintiff	PRIV6341		x
45.)	Selected by Plaintiff	PRIV6342		x
46.)	Selected by Plaintiff	PRIV6343		x
47.)	Selected by Plaintiff	PRIV6344		x
48.)	Selected by Plaintiff	PRIV6345		x
49.)	Selected by Plaintiff	PRIV6346		x
50.)	Selected by Plaintiff	PRIV6348	x	

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
1.)	Selected by Defendant	PRIV0119		x
2.)	Selected by Defendant	PRIV0122	x	
3.)	Selected by Defendant	PRIV0168	x	
4.)	Selected by Defendant	PRIV0200	x	
5.)	Selected by Defendant	PRIV0263	x	
6.)	Selected by Defendant	PRIV0283	x	
7.)	Selected by Defendant	PRIV0386	x	
8.)	Selected by Defendant	PRIV0388	x	
9.)	Selected by Defendant	PRIV0514	x	
10.)	Selected by Defendant	PRIV0521	x	
11.)	Selected by Defendant	PRIV0632	x	
12.)	Selected by Defendant	PRIV0796	x	
13.)	Selected by Defendant	PRIV1149	x	
14.)	Selected by Defendant	PRIV1216	x	
15.)	Selected by Defendant	PRIV1416	x	
16.)	Selected by Defendant	PRIV1654	x	
17.)	Selected by Defendant	PRIV1767	x	
18.)	Selected by Defendant	PRIV1831	x	
19.)	Selected by Defendant	PRIV1848	x	
20.)	Selected by Defendant	PRIV2228	x	
21.)	Selected by Defendant	PRIV2307	x	
22.)	Selected by Defendant	PRIV2319	x	
23.)	Selected by Defendant	PRIV2467	x	
24.)	Selected by Defendant	PRIV4604	x	
25.)	Selected by Defendant	PRIV5036	x	
26.)	Selected by Defendant	PRIV5071	x	
27.)	Selected by Defendant	PRIV5151	x	
28.)	Selected by Defendant	PRIV5170	x	
29.)	Selected by Defendant	PRIV5172	x	
30.)	Selected by Defendant	PRIV6508	x	
31.)	Selected by Defendant	PRIV6522	x	
32.)	Selected by Defendant	PRIV6523	x	
33.)	Selected by Defendant	PRIV6526	x	
34.)	Selected by Defendant	PRIV6528	x	
35.)	Selected by Defendant	PRIV6529	x	
36.)	Selected by Defendant	PRIV6530	x	
37.)	Selected by Defendant	PRIV6531	x	
38.)	Selected by Defendant	PRIV6540	x	
39.)	Selected by Defendant	PRIV6541	x	
40.)	Selected by Defendant	PRIV6542	x	
41.)	Selected by Defendant	PRIV6543	x	
42.)	Selected by Defendant	PRIV6563	x	
43.)	Selected by Defendant	PRIV7153	x	

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
44.)	Selected by Defendant	PRIV6608	x	
45.)	Selected by Defendant	PRIV6680		x
46.)	Selected by Defendant	PRIV6737	x	
47.)	Selected by Defendant	PRIV6875	x	
48.)	Selected by Defendant	PRIV6983	x	
49.)	Selected by Defendant	PRIV7242	x	
50.)	Selected by Defendant	PRIV9536	x	



<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
1.)	Randomly selected	PRIV0002	x	
2.)	Randomly selected	PRIV0003	x	
3.)	Randomly selected	PRIV8976	x	
4.)	Randomly selected	PRIV3417	x	
5.)	Randomly selected	PRIV8839	x	
6.)	Randomly selected	PRIV8553	x	
7.)	Randomly selected	PRIV0036	x	
8.)	Randomly selected	PRIV8557	x	
9.)	Randomly selected	PRIV8190	x	
10.)	Randomly selected	PRIV5151	x	
11.)	Randomly selected	PRIV8051	x	
12.)	Randomly selected	PRIV8052	x	
13.)	Randomly selected	PRIV8054	x	
14.)	Randomly selected	PRIV8055	x	
15.)	Randomly selected	PRIV5308	x	
16.)	Randomly selected	PRIV5309	x	
17.)	Randomly selected	PRIV5316	x	
18.)	Randomly selected	PRIV5317	x	
19.)	Randomly selected	PRIV2438	x	
20.)	Randomly selected	PRIV2441	x	
21.)	Randomly selected	PRIV0057	x	
22.)	Randomly selected	PRIV0058	x	
23.)	Randomly selected	PRIV9069	x	
24.)	Randomly selected	PRIV9071	x	
25.)	Randomly selected	PRIV9072	x	
26.)	Randomly selected	PRIV0063		x
27.)	Randomly selected	PRIV7564	x	
28.)	Randomly selected	PRIV4511	x	
29.)	Randomly selected	PRIV8057	x	
30.)	Randomly selected	PRIV6471	x	
31.)	Randomly selected	PRIV7953	x	
32.)	Randomly selected	PRIV6478		x
33.)	Randomly selected	PRIV5359	x	
34.)	Randomly selected	PRIV4524	x	
35.)	Randomly selected	PRIV4526	x	
36.)	Randomly selected	PRIV4528	x	
37.)	Randomly selected	PRIV4534	x	
38.)	Randomly selected	PRIV8861		x
39.)	Randomly selected	PRIV2460		x
40.)	Randomly selected	PRIV4544	x	
41.)	Randomly selected	PRIV7592	x	
42.)	Randomly selected	PRIV2836	x	
43.)	Randomly selected	PRIV3541	x	

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
44.)	Randomly selected	PRIV8228	x	
45.)	Randomly selected	PRIV6503	x	
46.)	Randomly selected	PRIV9082	x	
47.)	Randomly selected	PRIV0185	x	
48.)	Randomly selected	PRIV3543	x	
49.)	Randomly selected	PRIV0187	x	
50.)	Randomly selected	PRIV5372	x	
51.)	Randomly selected	PRIV2837	x	
52.)	Randomly selected	PRIV6510	x	
53.)	Randomly selected	PRIV6511	x	
54.)	Randomly selected	PRIV0200	x	
55.)	Randomly selected	PRIV0202	x	
56.)	Randomly selected	PRIV9084	x	
57.)	Randomly selected	PRIV5376	x	
58.)	Randomly selected	PRIV6522	x	
59.)	Randomly selected	PRIV6523	x	
60.)	Randomly selected	PRIV6537	x	
61.)	Randomly selected	PRIV6538	x	
62.)	Randomly selected	PRIV7016	x	
63.)	Randomly selected	PRIV7017	x	
64.)	Randomly selected	PRIV7018	x	
65.)	Randomly selected	PRIV7019	x	
66.)	Randomly selected	PRIV7020	x	
67.)	Randomly selected	PRIV5785	x	
68.)	Randomly selected	PRIV5786	x	
69.)	Randomly selected	PRIV5787	x	
70.)	Randomly selected	PRIV1199	x	
71.)	Randomly selected	PRIV2000	x	
72.)	Randomly selected	PRIV2001	x	
73.)	Randomly selected	PRIV3951	x	
74.)	Randomly selected	PRIV3952	x	
75.)	Randomly selected	PRIV3953	x	
76.)	Randomly selected	PRIV1257		x
77.)	Randomly selected	PRIV1258		x
78.)	Randomly selected	PRIV1259		x
79.)	Randomly selected	PRIV4778		x
80.)	Randomly selected	PRIV4779		x
81.)	Randomly selected	PRIV0470		x
82.)	Randomly selected	PRIV4781		x
83.)	Randomly selected	PRIV8930		x
84.)	Randomly selected	PRIV8931		x
85.)	Randomly selected	PRIV6967	x	
86.)	Randomly selected	PRIV6968	x	

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
87.)	Randomly selected	PRIV6969	x	
88.)	Randomly selected	PRIV6970	x	
89.)	Randomly selected	PRIV6971	x	
90.)	Randomly selected	PRIV6972	x	
91.)	Randomly selected	PRIV1033	x	
92.)	Randomly selected	PRIV1034	x	
93.)	Randomly selected	PRIV1035	x	
94.)	Randomly selected	PRIV1036	x	
95.)	Randomly selected	PRIV3886		x
96.)	Randomly selected	PRIV3887		x
97.)	Randomly selected	PRIV6998	x	
98.)	Randomly selected	PRIV6999	x	
99.)	Randomly selected	PRIV7000	x	
100.)	Randomly selected	PRIV1098	x	
101.)	Randomly selected	PRIV1099	x	
102.)	Randomly selected	PRIV1100	x	
103.)	Randomly selected	PRIV1101	x	
104.)	Randomly selected	PRIV5768	x	
105.)	Randomly selected	PRIV5769	x	
106.)	Randomly selected	PRIV5770	x	
107.)	Randomly selected	PRIV5771	x	
108.)	Randomly selected	PRIV5772	x	
109.)	Randomly selected	PRIV5703	x	
110.)	Randomly selected	PRIV5704	x	
111.)	Randomly selected	PRIV5705	x	
112.)	Randomly selected	PRIV5706	x	
113.)	Randomly selected	PRIV5707	x	
114.)	Randomly selected	PRIV5708	x	
115.)	Randomly selected	PRIV5709	x	
116.)	Randomly selected	PRIV5710	x	
117.)	Randomly selected	PRIV5711	x	
118.)	Randomly selected	PRIV5712	x	
119.)	Randomly selected	PRIV5713	x	
120.)	Randomly selected	PRIV5714	x	
121.)	Randomly selected	PRIV5715	x	
122.)	Randomly selected	PRIV9153	x	
123.)	Randomly selected	PRIV9154	x	
124.)	Randomly selected	PRIV9155	x	
125.)	Randomly selected	PRIV9156	x	
126.)	Randomly selected	PRIV9157	x	
127.)	Randomly selected	PRIV5187	x	
128.)	Randomly selected	PRIV5188	x	
129.)	Randomly selected	PRIV5189	x	

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>
130.)	Randomly selected	PRIV7861	x	
131.)	Randomly selected	PRIV7862	x	
132.)	Randomly selected	PRIV7863	x	
133.)	Randomly selected	PRIV7864	x	
134.)	Randomly selected	PRIV6808	x	
135.)	Randomly selected	PRIV6809	x	
136.)	Randomly selected	PRIV6810	x	
137.)	Randomly selected	PRIV6811	x	
138.)	Randomly selected	PRIV6812	x	
139.)	Randomly selected	PRIV6813	x	
140.)	Randomly selected	PRIV6814	x	
141.)	Randomly selected	PRIV6815	x	
142.)	Randomly selected	PRIV6816	x	
143.)	Randomly selected	PRIV6817	x	
144.)	Randomly selected	PRIV6818	x	
145.)	Randomly selected	PRIV6819	x	
146.)	Randomly selected	PRIV6820	x	
147.)	Randomly selected	PRIV6821	x	
148.)	Randomly selected	PRIV9145	x	
149.)	Randomly selected	PRIV9146	x	
150.)	Randomly selected	PRIV9147	x	
151.)	Randomly selected	PRIV9148	x	
152.)	Randomly selected	PRIV9149	x	
153.)	Randomly selected	PRIV9150	x	
154.)	Randomly selected	PRIV3459	x	
155.)	Randomly selected	PRIV7570	x	
156.)	Randomly selected	PRIV7571	x	
157.)	Randomly selected	PRIV7572	x	
158.)	Randomly selected	PRIV7573	x	
159.)	Randomly selected	PRIV7574	x	
160.)	Randomly selected	PRIV3479	x	
161.)	Randomly selected	PRIV2464		x
162.)	Randomly selected	PRIV0187	x	
163.)	Randomly selected	PRIV9084	x	
164.)	Randomly selected	PRIV9089		x
165.)	Randomly selected	PRIV0567	x	
166.)	Randomly selected	PRIV0568	x	
167.)	Randomly selected	PRIV0569	x	
168.)	Randomly selected	PRIV5626	x	
169.)	Randomly selected	PRIV5627	x	
170.)	Randomly selected	PRIV5628	x	
171.)	Randomly selected	PRIV5629	x	
172.)	Randomly selected	PRIV5630	x	

<u>No.</u>	<u>Selection criteria</u>	<u>Privilege Log</u>	<u>Privileged</u>	<u>Not Privileged</u>		
173.)	Randomly selected	PRIV3612	x			
174.)	Randomly selected	PRIV3613	x			
175.)	Randomly selected	PRIV5438	x			
176.)	Randomly selected	PRIV5439	x			
177.)	Randomly selected	PRIV5440	x			
178.)	Randomly selected	PRIV8875			x	
179.)	Randomly selected	PRIV4557			x	
180.)	Randomly selected	PRIV4558			x	
181.)	Randomly selected	PRIV5475			x	
182.)	Randomly selected	PRIV8625	x			
183.)	Randomly selected	PRIV8626	x			
184.)	Randomly selected	PRIV8627	x			
185.)	Randomly selected	PRIV8628	x			
186.)	Randomly selected	PRIV8629	x			
187.)	Randomly selected	PRIV0443	x			
188.)	Randomly selected	PRIV8631			x	
189.)	Randomly selected	PRIV8632			x	
190.)	Randomly selected	PRIV8633			x	
191.)	Randomly selected	PRIV1912			x	
192.)	Randomly selected	PRIV1913			x	
193.)	Randomly selected	PRIV1914			x	
194.)	Randomly selected	PRIV1915			x	
195.)	Randomly selected	PRIV1916			x	
196.)	Randomly selected	PRIV1917			x	
197.)	Randomly selected	PRIV2036	x			
198.)	Randomly selected	PRIV2037	x			170 85.0%
199.)	Randomly selected	PRIV2038	x			30 15.0%
200.)	Randomly selected	PRIV2039	x			<u>200</u>
201.)	Randomly selected	PRIV2040	x			
202.)	Randomly selected	PRIV2041	x			
203.)	Randomly selected	PRIV2042	x			
204.)	Randomly selected	PRIV2043	x			
205.)	Randomly selected	PRIV2044	x			
206.)	Randomly selected	PRIV2045	x			
207.)	Randomly selected	PRIV2046	x			
208.)	Randomly selected	PRIV2047	x			
209.)	Randomly selected	PRIV2048	x			